

APPENDIX

28 U.S.C. § 2201 provides:

In a case of actual controversy within its jurisdiction, except with respect to Federal taxes, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.

Section 13(1) of the Interstate Commerce Act, 49 U.S.C. § 13(1) provides:

Any person, firm, corporation, company, or association, or any mercantile, agricultural, or manufacturing society or other organization, or any body politic or municipal organization, or any common carrier complaining of anything done or omitted to be done by any common carrier subject to the provisions of this chapter in contravention of the provisions thereof, may apply to said Commission by petition, which shall briefly state the facts; whereupon a statement of the complaint thus made shall be forwarded by the Commission to such common carrier, who shall be called upon to satisfy the complaint, or to answer the same in writing, within a reasonable time, to be specified by the Commission. If such common carrier within the time specified shall make reparation for the injury alleged to have been done, the common carrier shall be relieved of liability to the complainant only for the particular violation of law thus complained of. If such carrier or carriers shall not satisfy the complaint within the time specified, or there shall appear to be any reasonable ground for investigating said complaint, it shall be the duty of the Commission to investigate the matters complained of in such manner and by such means as it shall deem proper.

**Excerpt from Affidavit of Herschel Cutler Filed with
Motion for Summary Judgment of Plaintiff-Intervenor
Institute of Scrap Iron and Steel, Inc.**

No practical remedy exists for ISIS members to challenge individual freight rates which they believe discriminate against iron and steel scrap and in favor of iron ore for the following reasons:

- (a) In order for such a discrimination challenge to be made under Section 13 of the Interstate Commerce Act it is thought necessary to compare each existing iron and steel scrap freight rate with a comparable rate for iron ore.
- (b) At least 100,000 distinct railroad freight rates for iron and steel scrap are known to exist.
- (c) Establishing comparable ore rates for each of these 100,000 scrap rates would be an extremely expensive and time-consuming task as well as a most difficult conceptual undertaking requiring the proof of comparability, and would impose a tremendous burden on ferrous scrap shippers.

Iron and steel scrap shippers are generally small entrepreneurs. They do not have the financial resources to establish the comparative rate data or to undertake the proceedings necessary to challenge what they may believe to be unjustly discriminatory freight rates under existing ICC requirements.